



**Report of the
Quinquennial Review of
The Social Security Advisory
Committee (SSAC)**

Response and Final Report



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*Presented to Parliament by the Secretary of State for Work and Pensions
by Command of Her Majesty
May 2004*

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Response

Introduction

The Social Security Advisory Committee (SSAC) was established in 1980. Its responsibilities are: to give advice on social security policy, consider and report on social security regulations referred to it, to advise on any matters referred to it by the Secretary of State and to scrutinise the Department's public information strategy. Its remit is set out in the Social Security Administration Act 1992.

The usual practice is that advisory bodies like SSAC are formally reviewed every five years to ensure that they are still appropriate and fulfilling their functions effectively. Alastair Darling agreed to such a review for SSAC in April 2002. It is usual to appoint an external reviewer to provide an independent assessment of the organisation. Professor Hazel Genn, Professor of Socio Legal Studies at University College, London was appointed to take on this task.

Hazel Genn has provided a detailed, comprehensive and helpful report for which I am most grateful. The report is published with this response. Professor Genn has taken into account the 13 responses to the consultation document issued in October. Professor Genn interviewed Sir Archy Kirkwood, the Chairman of the Work and Pensions Committee, Lord Newton of Braintree, the Chairman of the Council on Tribunals, representatives of the Child Poverty Action Group (CPAG) and the National Association of Citizens Advice Bureaux (NACAB) and officials from my Department, Inland Revenue and the Department for Social Development in Northern Ireland.

The report contains 13 recommendations. These are listed here along with the Department's response.

List of Recommendations

Recommendation 1

"It is strongly recommended that the Committee should continue to exist and that its activities should be supported and strengthened".

I accept this recommendation. The report records that SSAC is unanimously valued by its stakeholders as an authoritative, expert, and independent body, led by an outstanding Chairman. Not a single respondent argued for its abolition. We have not been able to identify a better or more effective way of carrying out the functions that SSAC performs. The reference to its activities being strengthened is set out more fully in subsequent recommendations and will be discussed under those headings.

Recommendation 2

“The Committee should continue to provide this important advisory function [ie the function of advising the Secretary of State on social security issues more generally than those that arise from its scrutiny of regulations]. In order to maintain an appropriate balance of the work of the Committee between scrutiny and broader advisory work, the Committee’s research budget should be restored and its research activity should be supported by the establishment of a new post of SSAC Research Officer”.

I accept this recommendation. This was also unanimously supported by those interviewed or who responded in the consultation exercise. The references to the research budget and the research officer are the subject of later specific recommendations and will be discussed there.

Recommendation 3

“In the absence of an obvious alternative body with the necessary knowledge base and experience, SSAC should continue to perform this function [ie of scrutinising the Department’s public information strategy], concentrating on high risk new products. To make better use of the Committee’s expertise, there should be a shift in emphasis from scrutiny of individual products to advice on information strategy”.

I accept this recommendation. SSAC performs a valuable and valued role and it is important that it continues to do so. I am grateful to the Chairman and members for the contribution they make. I have asked my officials to discuss with the Committee their specific role in the future.

Recommendation 4

“SSAC’s statutory remit should be extended to cover tax credits and its name changed accordingly. An alternative would be to extend only SSAC’s remit in relation to scrutiny of regulations, exempting the Inland Revenue from SSAC’s wider policy advice function. The least satisfactory alternative would be greater formalisation and appropriate restructure of existing arrangements between SSAC and the Inland Revenue. Whichever option is adopted, the range of specialisms within the Committee should be boosted by additional expertise on tax and income issues”.

The Chancellor of the Exchequer and I agree that it is important to maintain the principle of having an expert, independent body to provide advice across the range of benefit and tax credit issues. Both of us value the contribution that SSAC has made in its work with the Inland Revenue in relation not only to tax credits, but also to National Insurance Contributions.

We also take the view that it is not necessary or appropriate to take new statutory powers in relation to SSAC. The need to wait for suitable primary legislation would introduce unnecessary delay. The Chancellor and I believe that a non-statutory arrangement could work effectively. Our officials will work with the Committee to draw up the details of the operation of this arrangement. These will include details of the regulations and other materials that SSAC will consider, the fact that the provision of SSAC's advice to Treasury ministers will be in confidence, the terms upon which the Committee will report on its activities in its annual stewardship reports, SSAC's more general advisory function as it applies to tax credits and the working arrangements between Inland Revenue and the secretariat. All this will be set out in a memorandum of understanding, which will be publicly available and which it is planned to finalise before the summer Parliamentary recess. The memorandum will also cover Child Benefit and Guardian's Allowance. The operation of the arrangements will be kept under review. It will be open to the Committee to use their annual reports to comment on the effectiveness of the arrangements in practice.

Recommendation 5

“The Committee’s original remit under the 1992 legislation should be restored to include subordinate legislation made within six months of the enabling Act. Referral of such regulations should, however, be limited to areas of regulation involving significant change which can be identified during the Committee stage of a Bill.”

I accept this recommendation. However, to meet it in full would require an amendment to the Social Security Administration Act 1992. I do not think such a delay is acceptable. I have asked my officials to work with the Committee to define in more detail how their relevant scrutiny role could be carried out in relation to the next social security bill.

Recommendation 6

“The Department should produce clear guidance on the proper approach to be taken in the preparation of explanatory memoranda. The Committee should consider whether there are steps that could be taken to reinforce its independence from the Department. It should continue to take independent legal advice when necessary and consider whether decisions not to require a formal referral of regulations could be more fully documented”.

It is of the greatest importance that Departmental officials provide SSAC with accurate and full information about any aspect of the Committee's work. Clear guidance on the proper approach to be taken and the preparation of explanatory memoranda is available to all officials and is kept under review. Any proposals from the Committee on whether there are any steps that could be taken to reinforce its independence from the Department will be willingly considered. It is for the Committee to decide how it obtains legal advice and how it documents its decisions.

Recommendation 7

“SSAC’s role in relation to Northern Ireland is valued and the Committee is respected for its expertise and independence. There are, however, steps that need to be taken in order to increase its effectiveness. The procedure by which SSAC is consulted by the Department for Social Development in Northern Ireland on Northern Ireland regulations should be examined to see whether improvements might be made that reflect the appearance of operational divergence and outcome. The Northern Ireland Department for Social Development Assembly Committee should be encouraged to develop a relationship with SSAC in order to improve the Department for Social Developments Committee’s understanding of SSAC’s role in relation to Northern Ireland. Where GB regulations are considered, the Committee should be provided by DSD with information on the likely impact on Northern Ireland”.

This recommendation is accepted. Northern Ireland officials will take it forward with the Committee and its Secretariat.

Recommendation 8

“When the Department provides advice to SSAC, it should be their practice to consider how changes in regulations might differently impact in Scotland and Wales. The Department, through its normal liaison procedures, should encourage the Scottish Executive and the Welsh Assembly to provide the fullest possible information on how changes in regulations might differently impact in Scotland and Wales”.

Normal liaison procedures will continue to address the issues highlighted in this recommendation.

Recommendation 9

“SSAC should continue to pursue its contact and informal links with other relevant NDPBs in order to encourage mutual awareness and exchange of information.”

I encourage the Committee in its continuing activities in relation to this recommendation.

Recommendation 10

“The post of secretary should be maintained at the currently temporarily upgraded level.”

My officials have advised me that this recommendation has been accepted.

Recommendation 11

“An additional post of SSAC Research Officer should be established, to be filled on fixed term contracts of one to two years by recent social policy graduates”.

Recommendation 12

“The Committee’s research budget should be reinstated to facilitate the production of stand alone SSAC reports. An annual figure of £30,000 is suggested.”

I accept these recommendations but I have asked my officials to work with the Committee to find the best way of reinforcing SSAC’s role in research.

Recommendation 13

“The fees paid to Committee members should be reviewed and brought into line with other equivalent part time public appointments”.

The Department will undertake a review of the current fees.

Andrew Smith
Secretary of State for Work and Pensions
May 2004

Department for Work and Pensions

Report of the
Quinquennial Review of
The Social Security Advisory Committee (SSAC)

May 2003

Professor Hazel Genn CBE
Independent Reviewer

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Executive Summary

Background

- The Social Security Advisory Committee (SSAC) was established in 1980. Its responsibilities are: to give advice on social security policy; to consider and report on social security regulations referred to it; to advise on any matters referred to it by the Secretary of State; and to scrutinise the Department's public information strategy.

Performance and Continuing Need

Scrutiny of Regulations:

- SSAC is unanimously valued by its stakeholders as an authoritative, expert, and independent body, led by an outstanding Chairman. Not a single respondent argued for its abolition. In the context of the inherent and unusual complexity of social security policy, the purposes for which SSAC were established are still necessary. SSAC's advice has positive impact on the work of DWP and contributes to joint DWP/Treasury objectives. **It is strongly recommended that the Committee should continue to exist and that its activities should be supported and strengthened.**

Advising on Social Security Issues More Generally

- The Committee's general advice is valuable to Government Departments, to Parliament, to representative groups, and academia. This general advisory function is seen as important as the scrutiny function, but pressures on the Committee and secretariat may inhibit its proactivity in this respect. **The Committee should continue to provide this important advisory function. In order to maintain an appropriate balance in the work of the Committee between scrutiny and broader advisory work, the Committee's research budget should be restored and its research activity should be supported by the establishment of a new post of SSAC Research Officer.**

Scrutinising the Department's Public Information Strategy

- The Committee has recently taken on responsibility for scrutinising the Department's information material. There is concern that the work diverts effort from more important core activities. **In the absence of an obvious alternative body with the necessary knowledge base and experience, SSAC should continue to perform this function, concentrating on "high risk" new products. To make better use of the Committee's expertise, there should be a shift in emphasis from scrutiny of individual products to advice on information strategy.**

Statutory remit under SSAA 1992

Tax Credits

- As a result of the shift from benefits to tax credits, SSAC no longer has a statutory remit that reaches across the totality of the welfare landscape. The informal arrangements between SSAC and the Inland Revenue for the scrutiny of tax credit regulations are unsatisfactory. They do not ensure an appropriate level of scrutiny of

regulations, a timetable for consultation that permits effective scrutiny, nor reports and responses to them that are openly available. **SSAC's statutory remit should be extended to cover tax credits and its name changed accordingly. An alternative would be to extend only SSAC's remit in relation to scrutiny of regulations, exempting the Inland Revenue from SSAC's wider policy advice function. The least satisfactory alternative would be greater formalisation and appropriate restructuring of existing arrangements between SSAC and the Inland Revenue. Whichever option is adopted, the range of specialisms within the Committee should be boosted by additional expertise on tax and income issues.**

The Six Month Rule

- The increasing tendency to introduce changes to the benefits system through primary legislation, where the Committee has no statutory role, has compounded the gradual reduction in the number of regulations being referred to SSAC. In the longer-term, this may reduce its overall influence and its ability to recruit distinguished new members. **The Committee's original remit under the 1992 legislation should be restored to include subordinate legislation made within six months of the enabling Act. Referral of such regulations should, however, be limited to areas of regulation involving significant change which can be identified during the Committee stage of a Bill.**

How Might SSAC's Performance be Enhanced and Improved?

- The Court of Appeal decision in the Howker case underlines the need for the Department to provide SSAC with full and accurate information. Both the Department and the Committee have taken steps to tighten up guidance and procedures. **The Department should produce clear guidance on the proper approach to be taken in the preparation of Explanatory Memoranda. The Committee should consider whether there are steps that could be taken to reinforce its independence from the Department. It should continue to take independent legal advice when necessary, and consider whether decisions not to require a formal referral of regulations could be more fully documented.**

Northern Ireland

- SSAC's role in relation to Northern Ireland is valued. **There are steps that need to be taken in order to increase its effectiveness. The procedure by which SSAC is consulted by DSD NI on NI regulations should be examined to see whether improvements might be made that reflect the appearance of operational divergence and outcome. The NI DSD Assembly Committee should be encouraged to develop a relationship with SSAC in order to improve the DSD Committee's understanding of SSAC's role in relation to NI. When GB regulations are considered, the Committee should be provided by DSD with information on the likely impact in NI.**

Devolved Governments

- An effect of devolution is growing cross-border differences in service delivery and other provisions, leading to differential impact of social security regulations. **When the Department provides material to SSAC, it should be their practice to consider how changes in regulations might differently impact in Scotland and Wales. The Department, through its normal liaison procedures, should encourage the Scottish Executive and the Welsh Assembly to provide the fullest possible information on how changes in regulations might differently impact in Scotland and Wales.**

Links with other NDPBs

SSAC should continue to pursue its contact and informal links with other relevant NDPBs in order to encourage mutual awareness and exchange of information.

Resources

The Secretariat

- The Committee has a small, highly effective Secretariat. The current Secretary has an unusual breadth of knowledge, range of contacts, and experience and has been invaluable to the work of the Committee. **The post of Secretary should be maintained at the currently temporarily upgraded level.**

SSAC Research Officer

- The Secretariat team needs to be expanded in order to provide a suitable level of support for the Committee's current range of activities and the recommended expansion in its remit. **An additional post of 'SSAC Research Officer' should be established, to be filled on fixed term contracts of one to two years by recent social policy graduates.**

Research Budget

- **The Committee's research budget should be reinstated to facilitate the production of stand alone SSAC reports. An annual figure of £30,000 is suggested.**

Fees to Members

- **The fees paid to Committee members should be reviewed and brought into line with other equivalent part-time public appointments.**

The Review

1. Quinquennial reviews are intended to contribute to the Government's commitment to achieving better public services. They should insure that the right structures are in place to deliver the Government's agenda effectively and work in a joined-up way. Quinquennial reviews are also intended to provide a focus on improving future performance.
2. The Social Security Advisory Committee's remit and functions were last subject to a Review by the then Department of Social Security in 1996/7. Following this modest Review, no recommendations for change were made. The current Review commenced at the end of 2002 and occurs at an important point in the history of the Social Security Advisory Committee.

The Social Security Advisory Committee

Historical Background

3. The Social Security Advisory Committee (SSAC) is an Independent Statutory Body. It was established in November 1980 to take over the advisory functions of the Great Britain and Northern Ireland Supplementary Benefits Commissions and the role of the National Insurance Advisory Committee. SSAC is a purely advisory body, with no executive or administrative functions. The Committee's primary task is to give advice to the Secretary of State for Work and Pensions and the Department for Social Development in Northern Ireland on social security matters, excluding industrial injuries benefits, war pensions and occupational pensions for which there are separate advisory bodies. This role has remained substantially unchanged since 1980, although the scope of the task has altered as the social security system has evolved. In 1982, SSAC additionally took on the functions of the Advisory Council on Rent and Rates Rebates (which were subsequently replaced by Housing Benefit).
4. Since the last review of SSAC in 1997, substantial changes have taken place in the social security landscape. The Department for Work and Pensions (DWP) was created in June 2001 as part of the Government's programme of change to the machinery of government. The DWP combines the employment and disability responsibilities of the former DfEE with the benefits and pensions responsibilities of the DSS.
5. With the creation of the DWP in 2001 there is no longer a Department with a discrete social security remit, and social security is no longer a stand-alone policy area. What has traditionally been described as social security now has a range of different delivery vehicles, and the benefit component of many of these provisions is less visible.
6. During the period covered by this Review there has also been a progressive transfer of responsibility to Inland Revenue for significant elements of what was previously social insurance activity and means-testing of benefits (Family Credit, Disability Working Allowance). In April 1999, SSAC's formal remit for matters relating to National Insurance

ended when responsibility for National Insurance Contributions (NICs) passed from the then Department of Social Security to Inland Revenue. The Tax Credits Act 1999 replaced Family Credit and Disability Working Allowance with Working Families Tax Credit and Disabled Persons Tax Credit. The Tax Credits Act 2002 transferred responsibility for child benefit to the Inland Revenue and introduced, from April 2003, an integrated child tax credit, drawing together the various forms of support for children in existing benefits and tax credits. As responsibility for the new tax credits passed to Inland Revenue, SSAC's formal role in these areas also came to an end. Via an agreement between SSAC and the Inland Revenue, SSAC has an informal scrutiny role in relation to NICs and tax credit regulations.

Legal Basis

7. SSAC's current role and remit are set out in Section 170, Section 173, Section 174, Schedule 5, and Part I of Schedule 7 of the Social Security Administration Act 1992. The Committee has three principal functions: First, it must advise the Secretary of State on any general questions concerning the working of the relevant social security legislation referred to it (S170 (3)). Second, the Committee may give advice on any matter within its remit, whether or not it has been specifically asked to do so (S170 (1) (a)). The third, and most important feature of the work of the Committee, and which is probably **unique** among advisory bodies, is that the Secretary of State is under a duty to submit to it for consideration all proposals for making regulations, in the form of subordinate legislation, under the relevant parliamentary enactments (S172(1)). A total failure to fulfil this function would mean that the regulations in question are void¹. Since the Court of Appeal decision in the case of Howker² it also seems that regulations will be regarded as *ultra vires* where SSAC has been misled as to the import of the proposed changes by the Department, whether or not there was any intention to mislead the Committee. Although there is no requirement for the Secretary of State to lay before SSAC a draft set of the regulations alongside an account of his proposals, in practice this is usually done³.

8. There are, however, significant exceptions to the rule that the Secretary of State shall refer proposals for regulation to the Committee. These are:

- where the urgency of the matter makes it inexpedient to do so (S173 (1) (a));
- where the Committee agrees that the proposals shall not be referred (S173 (1) (b));
- where the regulations are intended to implement primary legislation and are made within a period of six months of the legislation (S173 (5)).
- where the regulations relate to Disability Living Allowance (Schedule 7 Part I)

¹ *R v Secretary of State for Social Services, ex p Cotton* (1985) Times, 14 December.

² Howker, Court of Appeal, November 2002.

³ Anthony Ogus, 'SSAC as an independent advisory body: its role and influence on policymaking', (1998) 5 JSSL, 156.

Remit

9. The Committee is the main UK advisory body to the Secretary of State for Work and Pensions⁴ on social security matters. The Committee's remit does not include industrial injuries, war pensions (now the responsibility of the Ministry of Defence) or occupational pensions. Neither does their remit extend to the Department's responsibilities for labour market policy or subjects which may interrelate with social security benefits that are outwith the Department's responsibilities. Examples of this are: social services, some training and education policies; health care; taxation; National Insurance contributions and Tax Credits. The Committee takes an interest in the impact of these policy areas on social security, but has no statutory advisory responsibility for them. However, as noted above, in the case of National Insurance contributions and Tax Credits, an informal agreement with Inland Revenue has been made so that the Committee is able to comment on proposals for changes, particularly when they are likely to impact upon social security matters.

10. The Social Security Act 1986 introduced two specific modifications to the Secretary of State's statutory obligations to consult SSAC on proposals for regulations (secondary legislation). The first of these was that, after referring draft regulations to SSAC, the Secretary of State may make the definitive version before receiving SSAC's views in circumstances that are deemed to be urgent. The second modification is that regulations made within six months of the commencement date of the relevant primary legislation "*need not*" be put to SSAC. However, in 1997, the then Department of Social Security agreed that, exceptionally, some exempt regulations would be put to SSAC. In these circumstances the Committee could not formally report its views to the Secretary of State and require a response from him if the Department has explicitly stated that this is the basis upon which the regulations have been put to the Committee. In practice, however, the Committee would not feel inhibited in making points to the Secretary of State on such regulations, albeit under the heading of general advice.

11. From April 2000, at the request of the then Secretary of State for Social Security, the Committee took on a significant new task of scrutinising the Department's public information strategy.

⁴ The new Department's purpose is to promote opportunity and independence for all. DWP's key objectives are:

- to sustain a higher proportion of people in work than ever before, while providing security for those who cannot work;
- to eliminate child poverty within a generation;
- to combat poverty and promote security and independence in retirement for today's and future pensioners; and
- to modernise our services to improve accessibility, accuracy and efficiency.

12. The Committee's responsibilities are:
- To give advice on social security issues as it sees fit;
 - To consider and report on social security regulations referred to it;
 - To consider and advise on any matters referred to it by the Secretary of State for Work and Pensions or the Northern Ireland Department for Social Development;
 - To scrutinise the Department's public information strategy.

Membership of the Committee

13. Under Schedule 5 to the Social Security Administration Act 1992, the Committee consists of a Chairman (currently Sir Thomas Boyd-Carpenter) and between 10 and 13 other members. The Secretary of State appoints the Chairman and members of the Committee, under procedures that have been approved by the Office of the Commissioner for Public Appointments (OCPA). All appointments are for three years and are renewable. One member is appointed after consultation with the TUC, one with the CBI and one after advice from Northern Ireland. One member is either disabled and/or is in a position to represent the interests of disabled people. By custom, one member is resident in Wales, one in Scotland and at least one member is from an ethnic minority. All members are involved across the entire range of the Committee's business. The current membership is set out in Annex D to this report.

Meetings

14. The Committee usually meets once a month. Members receive a fee of £148 per day for attendance – the Chairman receives £296. In addition, members may receive fees for reading time when scrutinising information products and, when taking part in visits to Departmental offices, travel expenses are also paid.

15. The Committee's annual budget is around £65k (this excludes staff costs but includes the cost of advertising for new Members).

Secretariat

16. The Committee is generally supported by a secretariat of four officials, all on secondment from the Department for Work and Pensions.

The Approach of the Review

17. The Review was announced in October 2002, at which time a consultation document was sent to around 30 organisations and individuals with an interest in social welfare (see Annex B for a list of those responding). Between January and April 2003 interviews were conducted with SSAC members, the Chairman and Secretary of SSAC, DWP officials, Inland Revenue officials, and representative groups (see Annex C for a list of those with whom interviews were conducted). Meetings of the Committee were attended by the reviewer and the Committee's publications and other documentation were reviewed. The findings of this Review are based on consideration of these various forms of evidence.

Performance and Continuing Need

18. In the historical period covered by this Review, the Committee has performed several distinct roles: scrutinising proposals for regulations; responding to requests for advice and offering advice on social security issues more generally; and advising the Department on its public information strategy. For the purposes of evaluation, each of the above roles has been considered individually.

Scrutinising Proposals for Regulations

19. Under the current procedures, proposals for regulations or amendments are presented to the Committee for consideration. This activity is probably unique and is also regarded as the most important of all SSAC's roles. It can be divided between informal scrutiny and consideration, and "formal referral".

20. Draft regulations or proposals for regulations must be submitted to the Committee by the Secretary of State (or the Northern Ireland Department for Social Development) responsible for social security issues unless:

- they are exempted from reference to the Committee (this applies to most regulations on the uprating of benefits and those regulations made within 6 months of the enactment of primary powers); or
- following reference of a set of proposed regulations, the Committee agrees that the regulations need not be formally referred (in practice the Committee rarely seeks a formal reference of regulations which are purely technical or wholly beneficial).

21. In cases of urgency, the Secretary of State may make regulations without prior reference to the Committee, and, if the matter becomes urgent after the reference to SSAC, the regulations may be made without waiting for the Committee's report. In both these instances, the Committee would proceed with the consultation in the usual way and produce a report which, together with the Secretary of State's response, would be laid before Parliament after the regulations have been made.

Procedure

22. When a set of proposed regulations has been drafted, officials also draft an Explanatory Memorandum (EM) which sets out the reasons for the proposed secondary legislation, its purpose and its intended effects. Officials work with the Committee's secretariat to resolve any questions raised by either the memorandum or the draft of the regulations. The secretariat then prepares a bundle of papers including the explanatory memorandum, a draft of the regulations, and any other relevant papers for Committee members.

23. Departmental officials attend the relevant meeting of the Committee to discuss the proposals with members. After this has been done, the Committee decides whether or not they wish the proposals to be formally referred for a report to the Secretary of State. Sometimes, the Committee asks for further information before reaching this decision. In some cases, where the Committee has concerns but does not wish to ask for a formal referral, its views and advice may be put to Ministers in correspondence. The Committee might ask whether the formulation chosen achieves the stated policy intention, or whether forms of working or particular terms employed are consistent across several sets of regulations. In some cases, following comments by the Committee, changes are made to the regulations in order to ensure greater clarity or to avoid unintended consequences.

24. If the Committee decides on a formal referral, it will usually then seek the views of interested parties employing the EM as public consultation document. The aim is that the Committee's reports to the Secretary of State will be based on as wide a range of evidence as possible. The organisations consulted by the Committee differ according to the subject of the regulations in question. The period for response is generally 4-6 weeks.

25. After consultation following formal referral, the Committee scrutinises the responses to the consultation, but does not see itself as under an obligation to reflect them. The Committee's secretariat prepares a draft report for the Committee's consideration. The finalised report is sent to the Department and if the Secretary of State decides to proceed with the proposed legislation, he must publish the report, and his response to the report's recommendations, when the regulations are laid. It is the Department's practice to lay the regulations in the form of a Command Paper containing all of this material.

26. As an illustration of the Committee's workload, in the period from 1 April 1995 to 31 October 2002, around 230 sets of proposals have generated 18 reports⁵. Having considered the Committee's report and recommendations, the Secretary of State may decide not to proceed with his proposals. For example, the proposed Housing Benefit (General Amendment) No 2 Regulations 1996 were abandoned in their entirety. In such cases, the Secretary of State must still publish the Committee's report and his response to it.

⁵ House of Commons Work and Pensions Committee, First Report of Session 2002-2003, Social Security Advisory Committee, HC 296.

Evaluation

27. Written submissions and interviews with Departmental and external stakeholders establish a clear consensus that SSAC has performed and continues to perform a number of very important functions in the field of welfare policy. **Not a single respondent suggested that the Committee should be abolished.** Moreover, with only one or two exceptions, the consensus was also that **if the Committee were to be abolished this would represent a serious loss of independent and impartial advice.**

28. This assessment of the value of SSAC must be understood in the particular context of social security policy and regulations which has some significant features. First, the widely referred to **inherent and unusual complexity of policy and regulations**, which creates difficulties for policymakers and drafters of regulations in identifying all of the ramifications of change. Second, the **increasing use of enabling legislation** which leaves much of the **detail of policy to be dealt with in subordinate legislation that may not be subject to close scrutiny in Parliament.** Finally, the **significant and radical changes to the structure of the DWP and its programme delivery** which is perceived, by some, as increasing rather than decreasing the need for independent scrutiny.

29. **SSAC is recognised among stakeholders as being an authoritative, expert, and impartial body⁶, led by an outstanding Chairman.** Its authority derives from **the range and quality of its expertise**, and its **demonstrable independence.** **The Committee perceives itself to be independent of government and politically neutral and is recognised as such by its stakeholders.** In requesting formal references to consider regulatory proposals the history of the Committee demonstrates a range of outcomes. It has recommended not implementing proposals; it has accepted the policy intention but suggested alternative means of achieving the result, or approved proposals. Following consultation with interested parties during the review of proposals the Committee seeks to provide a fair summary of the input of parties consulted, but does not assume that its recommendations in the report necessarily reflect those views. The Committee makes its own judgment⁷.

⁶ The positive view of the Committee expressed by the current administration was also held by a former Secretary of State under the previous administration (Lord Newton of Braintree) who stated during an interview that during his period of office the Committee “*provided a way for Ministers to test out where the real pressure points were and then look again at proposals and fine-tune them where necessary. The Committee had a benefit in giving the Minister an opportunity to adjust proposals because the Committee often made really good points. The Minister could also point to an independent body that had considered the proposals and to whom the Minister had responded. Although [SSAC] could be a menace if taken over by welfare rights movement, there has never been any evidence that that has happened.*”

⁷ Oguno op cit and reference to Eleventh Report (1997)

30. Those consulted for this Review gave a relatively consistent description of the positive value added by the Committee to the delivery of policy on social security, although there were some differences in the way that its contribution was prioritised. The key benefits can be summarised as follows:

- Alerting Parliament to the likely import and impact of measures before them;
- Independent and rigorous scrutiny of regulations (“*SSAC scrutiny can be more challenging than parliamentary scrutiny*”);
- Technical capacity to cope with the fine detail of regulations;
- Identification of issues that might have been missed by the Department;
- Read-across between different benefits and maintenance of policy coherence in inherently complex field of regulation;
- Opportunity to check and amend draft regulations before being presented to Parliament;
- Provision of considered feedback on proposed changes to regulations;
- Discipline on Department;
- Distillation of views expressed in wider consultation informing own independent conclusions.

31. Some of the most important factors underpinning SSAC’s widely-recognised contribution in this area of its activities are:

- The **quality** and **independence** of the Committee;
- The **obligation** on the DWP to refer regulations to SSAC;
- The obligation on the Secretary of State to **publish** SSAC reports together with his response and the regulations.

Impact of SSAC’s scrutiny activity

32. The Committee estimates that historically around 60% of their recommendations have been accepted⁸.

33. In assessing the impact of the Committee it is important to distinguish between public, formal impact, and informal, below-the-line impact. The more visible and obvious success in obtaining changes to regulations or abandonment of proposed changes is the tip of the influence ice-berg. There was general agreement among those interviewed for the Review and those responding to the QR Consultation Paper that the Committee has a very important role through informal discussions *prior* to the laying of regulations in influencing the Department. This was confirmed by Departmental officials in interviews. Although there may be an issue with the visibility and transparency of this activity, the existence and impact of the continuing dialogue between the Committee and the Department was recognised and understood by those making submissions to this Review.

⁸ Paper by Secretariat.

34. There was also general agreement among external stakeholders that public debate stimulated by SSAC's reports on regulations and independent policy reports could be helpful, even if policies were eventually implemented⁹.

35. A recent example of the effectiveness of the Committee was referred to by CPAG in its response to the QR Consultation Paper. The example concerned amendments made to the entitlement conditions of Disability Living Allowance under the Social Security (Disability Living Allowance) (Amendment) Regulations 2002¹⁰. The Committee called for the draft regulations to be referred to it for a formal report, and then consulted with some 63 organisations on the proposed changes. CPAG argued that the views of these organisations were accurately distilled in the SSAC report, which itself called on the Government not to proceed with the changes. Although the Government did not accept this advice, the SSAC report¹¹ which was attached to the draft regulations was available to MPs and further lobbying by interest groups enabled the regulations to be debated in Committee. Another recent SSAC report followed wide consultation on proposals by the Government to restrict backdating of housing benefit to three months rather than 12¹². In that case, the strength of feeling against the change voiced by the interest groups consulted by the Committee, and the negative report by SSAC itself, contributed to the proposed changes being withdrawn by the Secretary of State.

36. CPAG also commented on the usefulness of SSAC to MPs in alerting them to areas of concern "*and thus enabling the MP to focus on the important changes in the social security field.*" The Chair of the Work and Pensions Committee confirmed this perception during an interview.

37. A number of interviewees stated that if the preamble to a set of draft social security regulations states that the Committee has agreed that they need not be referred, then this promotes confidence.

38. In its written submission Mencap argued that "*There is a need for a body such as SSAC with a close relationship to, but independent of, the Department and probably all the more so as the Department becomes fragmented and loses its corporate identity, and welfare benefits become even more fragmented.*"

⁹ The Disability Alliance made this point forcefully in written submission and interview.

¹⁰ SI No. 648/2002.

¹¹ Cmnd 5469

¹² Cmnd 4459

Departmental stakeholders

39. Although the previous Review of SSAC during 1996/97 appears to have been somewhat low-key and limited in scope, it is clear that following the Review a positive decision was made to continue the Committee. The view of the Secretary of State in 1998 was that SSAC was performing functions useful to the Department in identifying potential problems with regulations, and that the Committee was also perceived by Parliament and pressure groups as having a useful role in examining legislation.

40. Written and interview evidence gathered from Departmental officials during the course of this Review confirms that assessment. For example:

“SSAC’s strength is to ensure that the detail of social security regulations gets independent scrutiny. Social security doesn’t get the same business and academic interest as other areas. It is an independent expert body that picks up things that others haven’t spotted. It is a thorn in the flesh having a body that scrutinises and criticises. It can be tiresome to governments. It is hard for Government to ignore their reports.”

“On their core duty i.e. legislative change through regulations, we benefit from it at official level through their knowledge, questions and consultations...They flagged up warnings to Ministers e.g. if a change was too abrupt, hard to understand, difficult to adjust. On the whole they make for better policy-making.”

“I was a complete beginner when I brought my first sets of regs to SSAC around 3 years ago. Fortunately, some of my team members had 'grown up' with SSAC as part of the working landscape, and they helped me to get used to the idea, and appreciate the positives! It was a bit of a shock to the system, having the Committee chewing up our bright ideas (and what struck me was the number of points and questions that came up that had not been raised at any earlier stage of development). It really made me look 'from the outside in' at what we were doing. And I know that our proposals - and our presentation strategy - were refined by the proofing and testing exercise.”

41. Observation of Committee meetings supported some of the evaluations of different stakeholders. Although the broader impact of the Committee’s activities could not be judged from interaction at meetings, those observed were characterised by:

- The high quality of the Committee’s input to discussion which is a consequence of its members’ breadth of knowledge and understanding of social security issues;
- The penetrating nature of questioning of DWP officials involving testing of arguments;
- The broad representation of the Committee means that criticisms do not come from a particular perspective;

- The Committee’s approach gives the Department the task of justification, and mastery of detail;
- The Committee can give the Department warning of danger areas.

Findings and Recommendation

42. **SSAC is unanimously valued by stakeholders for its authority, expertise and independence. Not a single respondent argued for its abolition.** In the context of the inherent and unusual complexity of policy and regulation in the field of social security, the purposes for which SSAC were established (under the SSAA 1992) are still necessary. The DWP is responsible for policy on employment, equality, benefit, pensions and child support. According to the Department’s PSA targets, the Secretary of State shares responsibility with the Treasury for eradicating child poverty, increasing employment, and reducing the number of unemployed people over 18. **SSAC’s formal and informal advice on proposals for regulations have a positive impact on the work of DWP**, thus contributing to the delivery of joint DWP and Treasury objectives.

43. **It is therefore strongly recommended that the Committee should continue to exist and that its activities should be supported and strengthened in the ways recommended in the remainder of this Report.**

Advising on Social Security Issues More Generally

44. The Committee may advise the Secretary of State about any relevant subject as it sees fit, or the Secretary of State may refer specific matters to it. For either part of this advisory role, the Department is required to provide the Committee with such information as the Committee may reasonably require for the proper discharge of its functions¹³.

45. Many of the members of the Committee have had direct experience of social security matters, having been involved in activities bringing them into contact with social security administration or policy in contexts other than SSAC¹⁴, and have specialist knowledge on such matters as disability, housing, policies for older people, employment, health, social care and law¹⁵. Members of the Committee are kept informed about developments in their field of interest via a compendium of news reports, press releases and other materials assembled and despatched regularly by the Secretariat. They make visits to social security offices, Jobcentre Plus offices, Pensions Centres and other operational establishments. They are regularly addressed by Ministers, senior officials and voluntary organisations. As a result of this broad range of knowledge and experience the Committee is well placed to function as an “expert” body, as well as a consultative body.

¹³ Section 170(4) SSAA 1992.

¹⁴ See the biographies of the current members of the committee at Annex D.

¹⁵ See discussion in A. Ogus, ‘SSAC as an independent advisory body: its role and influence on policymaking’, (1998) 5 *Journal of Social Security Law*, 156.

46. Since the Committee no longer has a specific budget for funding research, advice has most often been given in response to a specific request from the Secretary of State. This is provided by the Committee in the form of reports summarised in their Annual Reports. The Committee also engages in more diffuse advisory activity. This occurs when Ministers and/or senior officials attend Committee meetings to talk to Members and discuss interests and concerns.

47. The formal stand-alone research reports published by the Committee and the papers published within the Committee's Annual Reports provide evidence of the way the Committee discharges its function in providing specific advice to Ministers on social security matters. For example the Twelfth Report (1997-1999) contains an extended advice and Guidelines on Transitional Protection in social security. This was a response to Departmental officials who indicated that they would welcome the Committee's consideration of the issues, since Transitional Protection adds considerably to the complexity of social security law and generates substantial administrative costs. The Fourteenth report (2001) contained a paper on funeral expenses written by Professor Ogus in response to the Secretary of State's invitation to the Committee to generate ideas for providing help with funeral expenses. The paper describes options of different types of schemes with advice on the different options. The most recent Report (Fifteenth 2002) contains a paper on promoting social inclusion within the work-focused agenda, identifying risks and challenges within that agenda and making recommendations.

Summary of Policy Advice 1996 – August 2002 provided by SSAC secretariat							
	1996	1997	1998	1999	2000	2001	2002
Advice papers and responses to consultation documents	2 [figure covers two years]		3	0	3	2	2

Visits

48. Although the Committee has no specific remit in relation to operational matters, it takes a close interest in the way that policy translates into practice, and in the organisation and delivery of services to the Department's customers. Members participate in a full programme of visits to local and national delivery sites, meeting staff and customers and seeing how the system operates in practice. It also offers the opportunity for the Committee keep up to date with developments in the devolved administrations. A report of each visit is prepared for the Committee's internal use and a summary of the findings is published in the Committee's Annual Report. Advice given to the Secretary of State will often reflect what the Committee has seen and heard, and take in views and recommendations on operational, as well as policy matters. These visits provide the Committee with the opportunity to gather information which feeds into its consideration of policy and legislation. It also assists in relation to the Committee's new role in scrutinising the Department's information and advice for customers.

Evaluation

49. Through its general advisory function SSAC has sought to take a broad view of the changing role of social security provision, placing it in the context of wider Government policies, such as measures to reduce child poverty and promote social inclusion.

50. According to the views expressed during the Review, the Committee's principal contributions in this area of their activities are:

- SSAC's record of publishing reports offering a strategic overview of policy;
- The provision of a very high quality knowledge base;
- Read-across different areas of policy and departmental responsibilities;
- Checking and reporting on the coherence of the system as a whole;
- The ability to take a broad view of the direction of social security policy;
- Provision of expert reports on issues affecting large numbers of vulnerable people, where review is necessary but where the subject may not be high on the political agenda;
- Providing an assurance of independent and impartial input to social security policy.

51. The Chairman of the Work and Pensions Committee commented that "*The reports of SSAC have provided invaluable advice, for example the Social Fund report and report on debt. The reports are concise, distilled evidence.*" Disability Rights wrote that "*Its independence and broad knowledge of the field enable the Committee to take a strategic overview and to assess how specific proposals for change fit into the larger picture. This is helpful in highlighting inconsistencies in provision and treatment that arise over time as benefits are changed to meet particular policy objectives.*"

52. SSAC has both reactive and proactive functions. It is reactive in scrutinising proposals for changes to regulations and in responding to specific requests for advice from the Secretary of State. It has, however, considerable proactive potential through its statutory remit to offer advice through advisory think pieces. Although the advisory role is seen by many to be as important as the Committee's scrutiny role, there was some sense that it could be, and had been crowded-out by other commitments. In this, and some other respects, **the workload and resources of the Committee are issues.**

Findings and Recommendation

53. The general advice put forward by the Committee is valuable to Government Departments, to Parliament, to representative groups, and academia in providing a very high quality knowledge base that informs debate on welfare policy. The Committee has offered strategic overviews as well as detailed consideration of specific policy issues. This general advisory function is seen as important as the scrutiny function, but there is evidence that pressures on the Committee and secretariat may inhibit the Committee's proactivity in this respect.

54. It is therefore recommended that the Committee should continue to provide this important advisory function. However, in order to maintain an appropriate balance in the work of the Committee between scrutiny and broader advisory work, the Committee's research budget should be restored and its research activity should be supported by the establishment of a new post of SSAC Research Officer (see further below paragraphs 150 and 151.)

Scrutinising The Department's Public Information Strategy

55. The Department and Ministers continue to be responsible for information products of all kinds whether they are in printed or electronic form and irrespective of whether they are provided for the general public and/or advice agencies or purely for staff guidance.

56. Since May 2000 the Committee has taken on an additional role in advising on the accuracy of information the Department provides to the public. This role was announced in March 2000 by the Secretary of State for Social Security during his statement on inherited SERPS to the House of Commons. This task has represented a significant extension in the role of the Committee.

57. A Service Level Agreement has been agreed with the Department and the Committee has concentrated on items defined as "high risk" i.e. materials containing especially important information of messages about benefit entitlement. In June 2001 the Committee prepared a report looking at the Department's information and advice role and a number of recommendations in that report have been accepted.

58. In its Annual Report in 2001, the Committee reported that there were three strands to this work:

- checking the Department's internal assurance processes for information products, such as leaflets and generic letters to claimants;
- checking the content of information products; and
- checking on staff awareness of these products.

59. The Department sends the Committee a selection of products (mainly leaflets but also materials in other formats) it considers would benefit from consideration. The Committee takes a view on whether the products' contents are accurate, complete and

sufficiently clear for a reasonable person to understand. Officials provide a response on which of the Committee’s suggestions have been accepted and which have not. Over 30 products have been examined each year.

Evaluation

60. The communication of information from the Department to the public is an important aspect of the “delivery” of benefits and programmes. The Department spends a considerable amount on communication and “marketing” activity and there is a continuing need for the Department to get its message across to potential customers. The scrutiny of this activity is therefore regarded as important by the Committee, although the Chairman himself acknowledged that much of the editorial and proof-reading work involved in the scrutiny is rather “low grade” despite the importance of the broader issue of the Department’s communication strategy. In the Chairman’s estimate, the additional task represents about 10% of the Committee’s time. In practice three to four members of the Committee are likely to spend around two hours each per week scrutinising leaflets.

Summary or scrutiny of information products 2000- August 2002 supplied by SSAC Secretariat			
	2000	2001	August 2002
Information products scrutinised	33	36	23

61. The Committee distinguishes between legal accuracy and readability and comprehensibility, recognising that the two objectives may sometimes conflict, particularly where target customer groups may not have English as their first language or where literacy is seriously limited.

62. The scrutiny of information was the one area of the Committee’s work upon which there was some **divergence** of views among respondents to this Review. Among those who felt that this activity was an important function that ought to be performed by SSAC, the value of the Committee’s activity was seen as its ability to offer some assurance about the accuracy of information contained in material distributed by the Department¹⁶. Some respondents argued that SSAC’s knowledge base and independence places it in a unique position to provide the Department with a robust and informed view on its information strategy and individual products.

¹⁶ The Committee’s ability to be accurate and objective when identifying difficulties with customer information has been recently endorsed by the National Audit Office See Chapter 3 and recommendations 1-4 in National Audit Office report on DWP response to inherited SERPS problem (March 2003).

63. However, it was also argued that this activity might be deflecting attention from the other more important roles of the Committee on which they should be concentrating effort. This body of opinion included several members of the Committee who regard the scrutiny of the Department's information leaflets as a waste of the Committee's valuable time.

Findings and Recommendation

64. The Committee has taken on the new function of scrutinising the Department's information material and now regards this as a central part of its role. **Through this activity the Committee contributes to the Department's key objectives of improving the accessibility, accuracy and efficiency of its services to the public.** However, there is no agreement about whether this is an appropriate job for a Committee of SSAC's calibre and expertise, and there is concern that the role represents a diversion from the Committee's more important core activities. **Too much of the Committee's time has been spent on looking at individual products and too little on more strategic advice. A shift in emphasis from the former activity to the latter would represent a better use of the Committee's expertise.**

65. **Although it has been suggested that this role could be fulfilled by a body other than SSAC, there is no obvious alternative body that has the necessary knowledge base and experience to check the legal accuracy of information provided for customers by the Department. It is therefore recommended that SSAC continues to perform this function, maintaining concentration on "high risk" new products and strategic advice.**

Does the Social Security Administration Act 1992 provide an adequate legal basis for SSAC to carry out its functions?

Post-1997 Developments in Welfare Policy.

66. Since the establishment of the Committee in 1980 and with the gradual evolution of social welfare policy, the remit of the Committee has been subject to various modifications. However, the most significant changes have occurred since 1997 when the Committee was last reviewed. In 1997/8 the incoming Government commenced a wide-ranging programme of reform of the tax and benefits systems (Welfare to Work Programme). The goals of this programme were to promote employment and tackle poverty. A key to realizing these objectives was to achieve greater integration of tax and benefits¹⁷. The arguments in favour of greater integration were to simplify and streamline the tax and benefits system, making it easier for the taxpayer and benefit recipient to understand and for the Government to administer. Greater integration was also seen as

¹⁷ HM Treasury series *The Modernisation of Britain's Tax and Benefit System* No 2.

having the potential to unlock administrative savings for the Government and the individual. It was also thought that it would reduce the stigma associated with claiming means-tested benefits and thus increase take-up. The introduction of tax credits was therefore intended to rationalise and streamline the existing systems of support for children and of in-work support for families and people with disability. The policy has led to a number of changes in departmental responsibility for traditional social security benefits. In April 1999 responsibility for National Insurance Contributions (NICs) passed to Inland Revenue. The Tax Credits Act 1999 replaced Family Credit and Disability Working Allowance with Working Families Tax Credit and Disabled Persons Tax Credit. The Tax Credits Act 2002 transferred responsibility for child benefit to the Inland Revenue and introduced, from April 2003, an integrated child tax credit, drawing together the various forms of support for children in existing benefits and tax credits.

67. One result of these changes is that a substantial portion of what may still be considered “social welfare” has effectively shifted outside of the Committee’s statutory remit, since the statutory remit of SSAC relates to the Secretary of State of the DWP only. It is therefore arguable that the statutory remit of SSAC no longer covers the functions which were envisaged when it was first established, namely a body established to provide independent oversight and advice to Government on the totality of the welfare landscape – an objective which, as has been evidenced above, the Committee has successfully met.

68. Since tax credits are viewed by most of the respondents to this Review as integral parts of the welfare system, this narrowing of remit is important because it means that SSAC no longer has an expert input into important areas of social security. It is argued that in the future there will be less non-executive scrutiny of important statutory instruments. Committee members and external stakeholders are in agreement that there is no other body capable of looking at the implications of tax credits in the way that SSAC does.

SSAC’s relationship with Inland Revenue

69. In the wake of the transfer of responsibility for NICs, and the Tax Credits Act 1999 a concordat was drawn up between SSAC and the Inland Revenue. The concordat is a reflection of the increasing integration and interdependence of tax credits and social security benefits, an example being the close link between Housing Benefit and Tax Credits. The concordat permits the Committee, on an informal basis, to offer advice to the Inland Revenue on proposals for regulations in a way that is similar to the performance of its statutory function in respect of social security matters. This arrangement also covers Child Benefit, responsibility for which was transferred from DWP to the Inland Revenue in 2003. Under the terms of the concordat between the Committee and the Inland Revenue, proposals for regulations concerning tax credits are passed to the Committee as they are produced, following the current limitations of the existing statutory remit, for example, that those produced within six months of primary legislation are exempted from the process. Proposals for tax credit regulations are presented to the Committee together with a version of the Explanatory Memorandum normally provided by DWP accompanying social security proposals. This process is currently completed in correspondence, without formal presentation to the Committee by Inland Revenue

officials. Unlike the DWP, the Inland Revenue does not generally provide the Committee with regular policy updates.

70. Under these arrangements there is no ‘requirement’ for regulations to be passed to the Committee and there is no requirement for the Committee’s advice or comments on the proposed regulations to be published. SSAC’s experience to date has been that when tax credit regulations are passed to them, the timescale for scrutiny and comment is very short. According to the SSAC Secretariat, the timescale for dealing with tax credit regulations has often been seven days or fewer. This has to be compared with the period of up to three months normally allowed for dealing with DWP regulations (in the case of regulations “formally referred”).

Evaluation of arrangements

71. A key issue upon which **there was again an almost complete consensus in written submissions and interviews for this Review related to the perceived narrowing of SSAC’s remit as a result of the transfer of welfare benefits to tax credits and thus to Inland Revenue rather than DWP.**

72. The nature of the consensus was in the logic and intellectual argument for SSAC having a scrutiny role that reaches across the landscape of welfare provision. It was felt that this would deliver ‘joined-up’ scrutiny of regulations and would continue to provide the kind of check, discipline and advice that is so clearly valued in the Committee’s traditional role. A former Chairman of the Committee captured the sentiments of many respondents to the Review as follows:

“Under the cloak of an administrative change, a very substantial area of the benefit system has been removed from effective scrutiny and proper consultation by SSAC. The informal arrangements with the Inland Revenue are in my view thoroughly unsatisfactory.” Sir Peter Barclay, CBE Chairman SSAC 1985-93.

73. Concern about the removal of tax credits from the Committee’s statutory remit centred on:

- The lack of any legal requirement for regulations to be passed to SSAC by Inland Revenue;
- The lack of transparency in the arrangement;
- The lack of any requirement for SSAC’s advice or comments to be made public;
- Lack of any obligation on IR to respond to SSAC’s suggestions;
- The absence of opportunity for public consultation;
- A perception that informal arrangements worked imperfectly;
- The short timescale given to the Committee to comment on those proposals that were passed to them for consideration.

74. A number of dangers were articulated emanating from the unsatisfactory nature of the current informal arrangements with the Inland Revenue. The view of the Chairman of the Committee, echoed in other responses, was that the need and function for which SSAC was originally established has actually been **increased** as a result of this separation of responsibility for welfare provision between DWP and IR. Further, that although scrutiny across the board is essential in the field of social security, the informal understanding between SSAC and IR works “imperfectly”, with too little time being allowed for proper consideration and too little transparency over the relationship and working arrangements.

75. Examples of concerns expressed by stakeholders during the Review are as follows:

“The Tax Credits Act 2002 represents a huge sea-change in the landscape of the Welfare State and is far more significant than other recent changes to the benefits system. It is already clear that the new TCA regime applies very different concepts to those familiar to benefits law. This is not, as it might seem, an argument for saying that they are none of SSAC’s business. On the contrary, this is very much SSAC’s business, as the use of tax credits raises fundamental issues about the principles underlying transfer payments within the community. Also, many individuals move regularly between social security and tax credits. The case for a “joined up” approach is, in my view, highly persuasive.”[Professor Nick Wikeley]

“It would benefit customers, Ministers, officials and Parliament, if one independent body had scrutiny and advisory responsibility across the whole range of social security, in both its cash benefit and its tax credit forms, and including the interplay with education, employment, immigration, etc. Legislation or inter-Ministerial agreement could achieve this end.” [Mencap]

76. In his written submission to the Review, Professor Wikeley also suggested that the statutory remit of the Committee be formally extended to cover tax credits and its name changed accordingly. This issue was discussed during the report stage of the Tax Credits Bill in 1999 when Lord Goodhart moved an amendment to change the name of SSAC to the “Social Security and Tax Credits Advisory Committee”. In the course of debate on the amendment it was argued that the Treasury and Inland Revenue would be in need of advice from SSAC. The value and quality of SSAC’s reports were referred to as was the quality of its “expert advice”:

“In any other field I know of no advice that is quite as independent, as expert and as regularly available as that we receive from the Social Security Advisory Committee.” [Earl Russell]

In opposing the amendment, Baroness Hollis argued that the role of SSAC was to advise the Secretary of State for Social Security on matters of social security policy and not on general areas of social policy, irrespective of which Department they fell into. She argued that *“it would not be appropriate for a committee which has been set up to advise the Secretary of State for Social Security to extend its remit to advise the Board of Inland*

Revenue.” She acknowledged that draft regulations on tax credits should be exposed to interested and expert parties for comments and that the IR engaged in “targeted consultations”. The existing practice worked well and there was therefore no need to extend the remit of SSAC.

77. In so far as there was a difference of opinion expressed during this Review, it was in relation to the political and practical difficulties of the Committee delivering advice to three Departments that are now effectively “yoked together” in the field of welfare provision: the DWP, Inland Revenue and the Treasury.

Inland Revenue experience of informal arrangements with SSAC

78. Officials from the Inland Revenue interviewed during the course of the Review stated that the informal arrangements for SSAC to comment on tax credit regulations had been *‘useful and constructive’* and that it would be helpful for the arrangement to continue to apply to tax credits. The experience of the Revenue is that in commenting on regulations SSAC has:

- Raised new points not previously considered;
- Picked up points of technical detail; and
- Reinforced the Revenue’s own views on certain issues.

79. Revenue officials pointed out that SSAC was not the only external body with whom they consult. The specific strength of SSAC is assessed by Inland Revenue officials as lying in its understanding of the interaction of tax credits with the social security system. In other areas, for example, “definition of income”, the Revenue feels that, as currently constituted, SSAC has less to offer than organisations with a background in the tax system.

80. The officials from Inland Revenue stated that the Revenue had *‘not been selective’* in passing regulations to SSAC. If the Committee continues, the officials suggested that the Revenue would be happy for the informal relationship to continue and, indeed, that it might be helpful if a more orderly relationship could be established so that both sides were working to a less tight timetable. Moreover, there might be extra things that the Revenue could ask SSAC to do.

Findings and Recommendations

81. **The statutory remit of SSAC no longer covers the functions which were envisaged when it was first established**, namely a body established to provide independent oversight and advice to Government on the totality of the welfare landscape. The current informal arrangements between SSAC and the IR in relation to scrutiny of tax credit regulations are **unsatisfactory**. Essential elements in the performance of SSAC’s statutory function in the field of social security benefits which ensure the Committee’s effectiveness and public confidence in the process, and which are currently absent from the informal arrangement with Inland Revenue in regard to tax credits are:

***an appropriate level of scrutiny** of regulations, subjected to the **normal rigorous SSAC process**;

***a timetable** for consultation with SSAC that permits **effective scrutiny** to be achieved; and

***reports and responses to them that are openly available** so that concerns and recommendations are given publicity.

82. **It is therefore recommended that SSAC's statutory remit is extended to cover tax credits and its name changed accordingly. Such a step will recognise the integration of tax and benefits that underpins the Government's Welfare to Work policy objectives, and will acknowledge the interaction between tax and benefits.**

83. **An alternative would be to extend only SSAC's remit in relation to scrutiny of regulations (S172, SSAA 1992), exempting the Inland Revenue from SSAC's wider policy advice function (under S170(1)(a) SSAA 1992).**

84. **An improvement on the current arrangements, but the least satisfactory alternative, would be greater formalisation and appropriate re-structuring of the existing arrangements between SSAC and the Inland Revenue. The following model provides an example of how this could be achieved:**

- (a) A Service Level Agreement which formally requires Inland Revenue to consult SSAC within a predictable and realistic timescale;
- (b) On Tax Credit regulations and issues relevant to welfare benefits, SSAC should formally advise the Paymaster General in the same way that it currently advises the Secretary of State at the DWP.
- (c) Correspondence between SSAC and the Paymaster General, together with SSAC's advice should be published.

85. **Whichever option is adopted, it is recommended that the range of specialisms within the Committee is reviewed, and ways to bring in additional expertise should be explored, with a view to strengthening the Committee's knowledge-base on tax and income issues.**

86. **The additional resource recommended below at paragraphs 150, 151, 152 and 154 will be required to ensure that the Committee is in a position to apply the same rigour to its consideration of tax credits as is applied to social security benefits.**

The “six month” rule

87. Under current legislation, the Department “need not” refer to SSAC proposals for regulations made during a six month period following the commencement of the enabling Act. This limitation to SSAC’s remit was introduced by reforms in 1986 and was justified on the ground that such regulations merely embody the intention of the relevant Act and would have been thoroughly scrutinised during the normal Parliamentary processes. In 1997, following discussions between the Committee and the Department of Social Security, it was agreed that, exceptionally, some proposals made during the six month ‘quarantine’ period might be put to SSAC. However, SSAC would not have the power in these cases to report formally to the Secretary of State on the matters before it.

88. Since 1996, the annual totals of proposals for legislation coming forward for consideration by the Committee have fluctuated. This is attributed by the Committee to changes in regulations being introduced via primary legislation and the transfer of certain activities from the DSS/DWP to the Inland Revenue. Annual Stewardship Reports published by the Committee have regularly commented on this fluctuation. In the Twelfth Report covering the period May 1997 to May 1999 the Chairman’s introduction notes that in the early months of the new Government “*fewer proposals for amendments to regulations were put to the Committee for consideration than during comparable periods in previous years. Consequently, we conducted fewer public consultation exercises and wrote fewer published reports on such proposals.*” In the Thirteenth Report published in 2000 the Chairman again commented that “*Much of the change introduced over the last year has been the subject of primary legislation, where the Committee has no statutory role. This has meant that there have been fewer issues on which we have felt the need to conduct a formal consultations exercise.*” The most recent report (Fifteenth) published in 2001 reports that “*the reduced flow of proposals for regulations coming forward for our consideration that we had noted [in previous reports] has been maintained.*”

89. In interviews during this Review, the Chairman of SSAC confirmed this situation, commenting that fewer public consultations were taking place because some matters have been transferred to tax credits and that “*...if everything is to be done in primary legislation there will be less for SSAC to do.*”

90. Several submissions to this Review made the point that regulations drafted within six months of enabling legislation **may not** have been the subject of close scrutiny during the Parliamentary process and that although there may be debates around certain topics in the legislation, much detail is not debated at all. Many issues may not have been to Committee and will not have been debated in Parliament.

91. On the other hand, since 1992 the House of Lords Delegated Powers Scrutiny Committee has had the power to consider whether the provisions of bills inappropriately delegate legislative power or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny. As a result of its consideration of bills, the Delegated Powers Committee may recommend that the attention of the House is drawn to certain delegated powers. A recent example is the Ninth Report on the State Pension Credit Bill in 2001 (paragraph 6).

92. In its Report on SSAC, the Work and Pensions Committee suggested that “it might be worth reconsidering” the ‘six month rule’ while preserving the ability of the Secretary of State to act in cases of confirmed urgency.

93. While a blanket referral of all such regulations would swamp the Committee and the Secretariat, it would be possible to adopt a selective approach to referral of regulations within the six month period. For example, during the Committee stage of a Bill, areas of regulation involving significant change could be identified and flagged-up for referral to SSAC. This would be a useful sifting mechanism, consistent with the trend toward a more constructive relationship between the Commons and outside bodies.

Findings and Recommendations

94. There has been a gradual but fairly consistent fall in the number of regulations being referred to SSAC for consideration over the period of this Review. This fall can be attributed to the shift from benefits to tax credits referred to in the previous section and to an increasing tendency to introduce changes to the benefits system through primary legislation where the Committee has no statutory role. **Although the Committee has been kept busy with its new task of scrutinising information products, the balance of its work is clearly shifting. If this trend continues there may come a point when the function and output of the Committee is at odds with the calibre and expertise of its members. As the Select Committee has pointed out, this may in the longer-term have an impact on SSAC’s overall influence and standing and its ability to recruit distinguished new members.**

95. **It is therefore recommended that the Committee’s original remit under the 1992 legislation, which was limited by the reforms in 1986, should be restored so that SSAC’s statutory advisory function includes subordinate legislation made within six months of the commencement of the enabling legislation, except in cases of confirmed urgency.**

96. **Referral should be selective. During the Committee stage of a Bill, areas of regulation involving significant change should be identified for referral to SSAC.**

How might SSAC’s performance be enhanced and improved?

The Relationship between the Committee and the Department

97. The relationship between the Committee and the Department has recently been the subject of close scrutiny by the Courts in the case of Howker. The case relates to an issue that arose in November 1996. Following normal practice, the Department put proposals for regulations to the Committee so that the Committee could decide whether it wished the amendments to be referred formally to it under s.172 of the 1992 Act or whether it agreed under S.173 that they should not be referred. The Department’s practice at the time was to

describe each item proposed and to indicate whether the item was “technical, neutral, adverse or beneficial.” In this particular case a number of amendments were put to the Committee regarding the Social Security (Incapacity for Work) (General) Regulations 1995 re-enacted by the Social Security (Incapacity for Work and General Amendments) Regulations 1996. The regulation in question was Regulation 27(b) and the Department had indicated that the proposed amendment to this regulation was “neutral”. The Committee did not seek a formal referral of this proposal. On another amendment, which had been given the indicator “adverse”, the Committee did require a formal reference, but as a result the Department decided not to proceed with that proposal. Regulation 27(b) was eventually approved by Parliament.

98. In December 1997 the Child Poverty Action Group wrote to SSAC enquiring about the basis on which the Committee had agreed to dispense with a formal reference and report on the removal of Regulation 27(b). Having failed to qualify for his benefit, Mr Howker appealed on the ground that the regulation was invalid. In his decision on the appeal the Commissioner found that the Committee had been “*materially misled by what they were told by the departmental officials about the proposed amendment of Regulation 27.*” It was not suggested that the Committee had been misled deliberately by the Department, but that the agreement by the Committee to there being no reference in respect of Regulation 27 had been induced by “material misrepresentation” on the part of officials acting on behalf of the Secretary of State. Although the Commissioner eventually dismissed the appeal, he directed that copies of his decision be sent to the Parliamentary Joint Scrutiny Committee on Statutory Instruments and to the House of Commons Social Security Select Committee.

99. The case was then appealed to the Court of Appeal which gave its decision in favour of Mr Howker on 8 November 2002. The Court allowed the appeal on the ground that the Secretary of State acted outside his powers in making the regulations when, for reasons within the control of his own Department, the statutory procedure for doing so had not been properly followed. The view of the Court of Appeal was that although the Committee’s role is “advisory” the intention of the statutory scheme is that the Committee’s advice should be laid before Parliament unless the Committee agreed to no reference. Such agreement should be “informed” and the obligation is on the Secretary of State to provide “such information as the Committee reasonably requires.” Where the Committee has been misled, in the view of the Court of Appeal, the procedure intended by Parliament for the making of regulations has not been observed, and this is the case whether or not officials from the Department acted innocently.

100. The Court of Appeal decision in the Howker case raises important questions about:

- the way in which Departmental officials prepare and deliver advice to the Committee; and
- whether the Committee is sufficiently independent of the Department.

101. In its report on SSAC the Work and Pensions Committee recommended that the Committee and the Department should consider what changes to procedures may be necessary in the light of the decision of the Court of Appeal¹⁸.

102. In September 2001, following the Commissioner's decision in the Howker case explicitly criticising the behaviour of DSS officials, the Permanent Secretary of the DWP published guidance to officials on the proper practice to be adopted when explaining regulations to SSAC. The guidance stresses:

- the importance of staff involved in preparing and presenting material for SSAC having a "full and accurate" understanding of what the Committee's requirements are;
- the Committee needs to be made fully aware of the impact of proposed changes on individual customers to enable the Committee to reach a decision on whether proposals should be 'formally referred' for report to the Secretary of State;
- that it is "essential" that material presented by the Department and especially the written memorandum, sets out the position as fully and explicitly as possible, including the impact a change may have on individuals;
- "Under no circumstances should relevant information be withheld or concealed."
- in the preparation of memoranda officials must be explicit about how any proposed amending regulation differs from the current provision, taking into account interpretation in practice.

103. The Permanent Secretary's guidance note, available to all Departmental staff on the internal staff website, also advises DWP officials to follow the guidance in the SSAC Secretariat Business Guide. This has recently been updated to provide more explicit advice to DWP officials. The current edition of the Guide points out to officials that their EM to the Committee can be used in evidence for any legal challenge to the regulations. Paragraph 1.30 of SSAC's Business Guide states that it is essential that the contents of the EM are accurate and complete, and presented in an accessible manner. Officials are advised to avoid using descriptors for proposals such as "neutral" "technical" "beneficial" or "restoring the policy intention". The Committee requires the impact of measures on individual customers to be explained in an impartial way, drawing out disadvantages as well as advantages of proposals.

104. In 2001 the Department also reviewed the management of the SSAC Secretariat. Currently the Secretariat reports to the SSAC Chairman and has no direct accountability or reporting lines to the Department.

¹⁸ Work and Pensions Committee, First Report of Session 2002-2003, Social Security Advisory Committee, HC 296, paragraph 42 and recommendation (d).

105. The Secretariat of the Committee have also strengthened the SSAC “awareness training” that it provides to the Department, and officials new to SSAC business are advised to take advantage of this programme.

106. Interviews with Departmental officials indicate that the implications of the Howker judgment have been taken seriously and that greater attention is being paid when advising the Committee about the potential impact of changes to benefit recipients. The focus must include not simply the impact of changes on expenditure but the impact on individuals and groups. In other words, officials have a responsibility to consider not only public accounting issues but also the distributional impact of changes to regulations.

107. Committee members for their part expressed some concern that the Howker decision might make officials more defensive. On the other hand the abandonment of the practice of defining changes as beneficial, neutral, adverse, etc., was welcomed on the ground that it will avoid some of the problems that emerged in the Howker case. The previous practice was also unhelpful in that it implied that SSAC was only interested in claimants and not the tax payer.

108. There is also concern that the Howker decision may lead to speculative claims attempting to declare that regulations are invalid on the ground that the Committee had decided not to have regulations formally referred as a result of deficient advice from the Department.

109. CPAG in their submissions to this Review have argued strongly that the Committee’s secretariat should include a “legally qualified” member on the grounds that this would remove “the need to rely overly on the accuracy of the information passed to it by the Secretary of State” and would “underscore” the Committee’s independence from the Department. However, there was no support for this view among members of the Committee and other stakeholders. The Committee has legally qualified ‘expert’ members, and the Committee has a contract with the Treasury Solicitor to purchase independent legal advice when it is required.

110. In their report on SSAC the Work and Pensions Committee recommended that consideration be given to departmental officials leaving the room while the advice they have given is discussed by SSAC.

Findings and Recommendations

111. The Court of Appeal decision in the Howker case underlines the importance of Departmental officials providing SSAC with accurate and full information about the impact of proposed regulations on individual customers so that the Committee can make an informed decision about whether to ask for regulations to be ‘formally referred’. **In reaching decisions about formal referral of regulations, the Committee is entitled to rely on the accuracy of the information provided by the Department to inform those decisions. Expecting the Department to provide full and accurate explanatory information does not compromise the Committee’s independence.** Both the Department and the Committee have taken steps to tighten up guidance and procedures.

112. **It is recommended that the Department considers what additional measures can be taken to strengthen its guidance to officials to ensure that advice to the Committee is full and properly considered, taking into account not only the impact of change on expenditure, but carefully considering the impact on benefit recipients and potential recipients. Rather than relying on the SSAC Secretariat to ensure compliance with its own Business Guide, the Department should itself produce clear guidance for its officials on the proper approach to be taken in the preparation of Explanatory Memoranda for SSAC.**

113. **The Committee must be alert to the need to protect the appearance of its independence as well as the fact of its independence by asking officials to withdraw at appropriate times during discussion of proposals. The Committee should consider whether there are other steps that could be taken to reinforce its independence from the Department.**

114. **The Committee should continue to take independent legal advice when necessary.**

115. **To enhance the Committee’s independence and the transparency of its procedures, SSAC should consider whether decisions not to require a formal referral of regulations could be more fully documented.**

Informal discussions between SSAC and the Department

116. The issue of informal discussions between SSAC and the Department was raised in written responses to the QR Consultation and during interviews. As noted above, although there were some concerns that this aspect of SSAC’s activity was non-transparent, it was accepted that private, informal discussions contribute to the effectiveness of the Committee. There does not appear to be a pressing need to urge significant change in the Committee’s approach and this view is consistent with the conclusion of the Work and Pensions Committee’s report on SSAC, that the balance to be struck between private deliberation and public disclosure should be left to the Committee, as it is now.

Northern Ireland

117. SSAC separately advises the Department for Social Development (DSD) in Northern Ireland¹⁹. Although Northern Ireland has always had its own social security system, the “parity principle” as it applies to social security, child support and pensions means that the range and rates of benefits broadly replicate the GB arrangements. Changes in existing legislation and new legislation take effect at the same time as in GB. Despite devolution of responsibility for social security to the Assembly, the Northern Ireland Act 1998 contains provisions to ensure that the two systems continue to work coherently. The most recent concordat between the DWP and the NI Department for Social Development (DSD) agreed in April 2002 provides guidance for consultation and communication in order to ensure that GB and NI legislation remains the same, or “*that any divergence can be accommodated*”.

118. In principle, regulations in relation to social security in Northern Ireland are referred by DSD NI to SSAC in the same way as the GB DWP refers regulations. A representative from DSD normally attends SSAC meetings. However, under the relevant legislation, DSD regulations are exempt from referral to SSAC if the regulations in question are making provision corresponding to that in GB regulations.

119. In practice, NI regulations normally follow along behind GB regulations that apply in England, Scotland and Wales. SSAC discusses the detail of what is proposed when the GB regulations are before them. The representative from the DSD present at the meeting will make a statement for the record that NI will be making corresponding provisions and may provide details of how the NI provisions will operate. However, as a result of historical differences between NI and GB, for example domestic rating and social housing, it is not possible for “corresponding” provisions to be made. Thus separate NI regulations, for example dealing with Housing Benefit, will therefore come to the Committee in the normal way.

120. Among the views expressed during this Review, which addressed the Committee’s role in relation to NI, there was general support for its work. Law Centre (NI) felt that SSAC offered a unique opportunity to provide feedback on both specific Northern Ireland concerns as well as general input on proposed changes to social security legislation.

121. However, a number of concerns were also raised about SSAC’s advisory function in relation to NI regulations. These concerns can be summarised as follows:

- The procedure by which SSAC is consulted on NI regulations is insufficiently clear;
- There is a need for greater recognition of the fact that NI has not followed the DWP organisational or service delivery model with the result that in some respects the systems are growing apart;

¹⁹ S149 of the Social Security (NI) Act 1992. S149 (1) and (2) state that referral of regulations to the SSAC is subject to 149(3).

- The NI DSD Assembly Committee may not be sufficiently engaged with the Committee in respect to its Northern Ireland remit;
- There is a need to enhance the role the Committee plays in ensuring feedback is sought from NI on legislative and policy changes in light of structural differences between NI and GB (for example, family size, age structure, prevalence of ill health and unemployment) which mean that some changes in provision will have a greater or different impact in NI.

122. The Chairman of SSAC indicated that the Committee regards the separate advice provided for social security in Northern Ireland as an important part of their work. However, the Committee has detected signs of divergence in the application of social security regulations in NI as a result of devolved powers.

123. An official from DSD NI was very supportive of SSAC's role in relation to NI. The Committee is regarded as a higher level advice body than might be achievable in NI and is valued for its expertise and independence. The experience of NI observers at SSAC meetings has been that the Committee's depth of knowledge and quality of questioning is very high.

Findings and Recommendations

124. SSAC's role in relation to Northern Ireland is valued and the Committee is respected for its expertise and independence. There are, however, steps that need to be taken in order to increase its effectiveness.

125. It is therefore recommended that the procedure by which SSAC is consulted by DSD NI on NI regulations should be examined to see whether improvements might be made that reflect the appearance of operational divergence and outcome.

126. The NI DSD Assembly Committee should be encouraged to develop a relationship with SSAC in order to improve the DSD Committee's understanding of SSAC's role in relation to NI.

127. There is a need to ensure that when GB regulations are considered, SSAC should be provided by DSD with information on the likely impact in NI.

SSAC and Devolved Governments

128. Reference was made during the Review to the implications for the work of SSAC as a result of devolution. There is a perception of growing complexity with divergent practices between England, Scotland, and Wales, involving divergence in systems and responsibilities. Although policy on social security has a national reach there are significant differences in modes of service delivery as a result of devolved powers and **many interactions between social security matters and services for which responsibility has been transferred to devolved governments.**

129. Although social security policy has not transferred to the Scottish Executive or the Welsh Assembly, SSAC's national advisory role requires that the Committee is at least aware of special issues affecting Scotland and Wales that arise as a result of devolved power.

130. The DWP has agreed "Concordats" with the Cabinet of the National Assembly for Wales, and with the Scottish Executive.

Scotland

131. Under Schedule 5 of the Scotland Act 1998 responsibility for social security, child support, and pensions policy and administration, is reserved, and remains with the UK Government. It is recognised, however, that there are many interactions between social security matters and services for which responsibility is devolved, on which the two administrations need to keep in close touch. For example Housing Policy and Local Government Finance (devolved responsibility) interact closely with Housing Benefit and Council Tax Benefits. Under the terms of the Concordat²⁰ the Department and the Executive mutually agree to alert each other as soon as practicable to proposals for new policy initiatives and changes to existing policies where there is a direct or indirect impact on the other's areas of responsibility.

132. Concerns were expressed that SSAC is "*almost invisible in Scotland*" and that the Scottish Executive does not appear to be keen to establish a relationship with the Committee. Although social security is a UK responsibility, it impacts on the work of several Scottish Executive Departments which, on this issue, are not very 'joined-up'. There may be scope for improvement here.

²⁰ Memorandum of Understanding, December 1999.

Wales

133. Under the Government of Wales Act 1998, the Welsh Assembly has no powers to introduce primary legislation. Responsibility for social security policy and administration remains with the UK Government. However, there are many interactions between social security matters and services for which responsibility has been transferred. An example is Housing Policy and Local Government Finance (devolved responsibility) which interact closely with Housing Benefit.

134. A Concordat, similar to that for Scotland, was agreed between the National Assembly for Wales and the Department in 1999²¹.

135. Although few opinions were expressed specifically about the Committee's responsibility in relation to Wales, the comments made echoed concerns expressed about Scotland i.e. the need for the Committee to be alive to the differential impact of regulations in Wales as a result of different provisions in areas of devolved responsibility; the need to raise the Committee's profile within the Welsh Assembly.

Findings and Recommendations

136. An effect of devolution is growing cross-border differences in service delivery and other provisions, leading to differential impact of social security regulations. In order to remain an effective national advisory body SSAC must be alive to these differences. Although the Committee can draw on the knowledge and experience of its Scottish and Welsh members, there is a need for reliable information from officials about differential impact in order to inform the Committee's deliberations.

137. It is the responsibility of policy managers within the Department to understand the interactions between social security matters and services for which responsibility has been transferred to devolved governments. The DWP and the devolved governments of Scotland and Wales are dependent on each other's services to deliver their respective responsibilities in a number of areas of welfare provision.

138. It is therefore recommended that when the Department provides material to SSAC it should be their practice to consider how changes in regulations might differently impact in Scotland and Wales.

139. It is further recommended that the Department, through its normal liaison procedures, encourages the Scottish Executive and the Welsh Assembly to provide the fullest possible information on how changes in regulations might differently impact in Scotland and Wales.

²¹ This was revised in December 2000.

Links with other NDPBs

140. One or two respondents to the Review suggested that SSAC should seek to establish stronger links with other NDPBs. Examples of other bodies mentioned are: the Industrial Injuries Advisory Council (IIAC) and the Disability Living Allowance Advisory Board (DLAAB). One respondent suggested that there is a compelling case for making DLAAB a sub-committee of SSAC. It was also pointed out by Professor Wikeley that there is no equivalent to SSAC dealing with child support issues. He suggested that a child support advisory committee might be established in some form.

141. The Committee does not at the moment have formal links with other NDPBs. SSAC has a good working relationship with the Work and Pensions Select Committee and has recently established contact with the Disability Employment Advisory Council with which there is some overlap of function and a clear business interest between the two organisations. A preliminary meeting has been held to establish how the relationship might work in the future. SSAC has contact with the DLAAB involving mutual attendance at meetings. There is also a link with IIAC and members of SSAC attend have attended a recent open meeting.

142. Although informal links are useful and it is important to develop mutual awareness it must be recognised that SSAC has very different functions from these other bodies and it is unclear how more formal arrangements would increase the effectiveness of SSAC.

Recommendation

143. SSAC should continue to pursue its contact and informal links with other relevant NDPBs in order to encourage mutual awareness and exchange of information.

Resources

144. The Committee has a small, highly effective Secretariat. The Secretariat currently comprises three full time posts, one part-time post and part-time administrative support. One full-time post has been vacant since August 2002. The members of the Secretariat are all seconded from the Department and have a wide range of experience, knowledge and skills covering social security and related fields. Because the Committee members are all part-time, they depend on the Secretariat to do much of the groundwork on proposals for legislation coming forward for scrutiny, and on the information products examined. The Secretariat also research and draft advice papers and reports, accompany Members on visits, and plan and manage all the Committee's business with the Department.

145. The current Secretary to SSAC has an unusual breadth of knowledge, range of contacts, and experience, and is regarded as invaluable to the Committee's work. Although the Secretary is seconded from the Department, and this might be thought to compromise the Committee's independence, this apparent disadvantage is outweighed by the benefit of the knowledge and understanding of Department practices that a secondee has, as well as access to existing networks. However, the role of Secretary to SSAC is not necessarily seen as a career-advancing activity, despite the range of skills and knowledge necessary to perform effectively. There is a strong argument for this post being maintained at the current temporarily upgraded level – DWP Grade 6.

SSAC Research Officer

146. The Secretariat team needs to be expanded in order to provide a suitable level of support for the range of activities currently carried out by the Committee and any expansion in its work in line with earlier recommendations of this Review. Rather than adding another seconded post to the team, a more imaginative approach would be to recruit as SSAC Research Officer a series of outstanding young social policy graduates on fixed term contracts who would work under the guidance of the Secretary²².

SSAC's Research Budget

147. As mentioned above (paragraphs 49 to 52) the value of SSAC research reports was commended by almost all of those responding to this Review, and the recent decline in the number of research reports produced by the Committee was widely commented on. This decline is a reflection of the workload of the Committee and the loss of its research budget. There is very strong support for the Committee's research budget to be restored.

148. The fees paid to members do not reflect the demands made of them. If the Committee's role is to be strengthened and enhanced as recommended, the level of fees should be reviewed.

²² A model of this sort was suggested in a written submission to the Review by Professor Nick Wikeley who quoted examples from the Law Commission and the Appeals Service..

Recommendations

149. It is recommended that the post of Secretary be maintained at the currently temporarily upgraded level of DWP grade 6 to reflect the nature of the work currently being performed by the Secretary and mindful of the need to attract a replacement of equivalent skill, knowledge and experience.

150. It is further recommended that the support available to the Committee is strengthened by the addition of a new post to the Secretariat team of ‘SSAC Research Officer’. This post should be filled on fixed term contracts of one to two years by outstanding recent social policy graduates. The appointee would provide general research support across the Committee’s core functions.

151. The Committee’s research budget should be reinstated to facilitate the production of stand alone SSAC reports. An annual figure of £30,000 is suggested.

152. The fees paid to Committee members should be reviewed and brought into line with other equivalent part-time public appointments.

Committee Membership

153. It was noted earlier that there would be advantages in expanding the Committee’s expertise in tax, pensions and income analysis. Since the size of the Committee is determined by Statute, it would be an advantage to be able to co-opt additional members. The Committee should therefore have access to sufficient funds to buy in relevant expertise.

Recommendation

154. It is recommended that the Committee should have access to sufficient funds to co-opt additional members with expertise in tax, pensions, and income analysis.

Conclusion

155. This Review has established that SSAC is an advisory body that is unanimously valued by stakeholders for its authoritative, expert and independent scrutiny of social security regulation - an area of inherent and unusual complexity. The Committee’s contribution to policy debate is valued and respected by Parliamentarians, Government Departments, representative groups and academia. The Committee should be permitted to continue with its important work. Its traditional reach across the landscape of social welfare provision should be restored by bringing tax credits and NICs within its remit and by removing the exemption from scrutiny of regulations laid within six months of enabling legislation. To maintain the quality and rigour of the Committee’s work it needs additional research capacity and a small research budget.

Annex A

Terms of Reference of Quinquennial Review

To examine –

- Whether the purposes for which SSAC were established under the Social Security Administration Act 1992 and previous legislation are still necessary.
- Whether the functions currently carried out by SSAC to deliver these purposes are still appropriate and adequate.
- Whether, in the light of recent Machinery of Government changes, the Social Security Administration Act 1992 provides an adequate legal basis for SSAC to carry out its functions; and if so, whether it requires amendment.
- Whether these functions are best carried out by an Advisory NDPB; and, if so, how might its performance be enhanced and improved.

In the course of this examination -

- Consider how the activities carried out by the SSAC in discharging its current statutory remit contribute to the delivery of DWP, DSD (Northern Ireland), and wider Government objectives.
- Consider the extent to which the interests of customers for social security and related services are served by these activities.
- Evaluate the impact of the activities carried out by the SSAC, and its overall performance in the discharge of its statutory functions over the last five years.
- Consider the possibility, and impact, of either dispensing with, or extending, such activities; and the potential for managing, administering and organising them in different ways (including merging, rationalising, restructuring, contracting-out etc) so as to improve the outcomes for Ministers, the Department and Government more generally.
- Evaluate any options for changes to the current arrangements, and make recommendations accordingly.

Annex B
Written responses to the consultation paper

Trades Union Congress.

National Association of Citizens Advice Bureaux.

Jim McKenny.

Rethink.

Sir Peter Barclay C.B.E..

Law Centre (Northern Ireland).

Greater Manchester Welfare Rights Advisers Group.

Disability Alliance.

Mencap.

Child Poverty Action Group.

Independent Review Service *for the Social Fund*.

Professor Nick Wikeley.

Association of Directors of Social Work.

Annex C
List of those Interviewed for the Review

Ursula Brennan -

Group Director, Working Age & Children, **Department for Work and Pensions.**

Owen Tudor -

Trades Union Congress

Leigh Lewis -

(then) Chief Executive, **Jobcentre Plus**

Paul Gray -

Managing Director, Pensions & Disability, **Department for Work and Pensions.**

John Wheatley -

Social Policy Officer, **National Association of Citizens Advice Bureaux.**

Lorna Reith -

Chief Executive, **Disability Alliance.**

Don Brereton -

Director, Disability and Carers Group, **Department for Work and Pensions.**

Sue Walton, John Marney -

Tax Credits, **Inland Revenue.**

John O'Neill -

Assistant Secretary, Social Security Policy & Legislation Division, **Department for Social Development, Northern Ireland**

Sir Archy Kirkwood -

Chairman, **Work and Pensions Committee.**

Stewart Wright -

Legal Officer, **Child Poverty Action Group.**

Lord Newton of Braintree

Chairman, Secretary, and Members of SSAC

Annex D

Biographies of current members of SSAC

Sir Thomas Boyd-Carpenter, KBE joined the Scots Guards as a National Serviceman in 1956 and was commissioned in 1957. He has served in the United Kingdom and in Aden, Oman, Malaya, Borneo and Germany, and was Chief of Staff, HQ British Army of the Rhine from 1988-89. His final post was Deputy Chief of Defence Staff (Programmes and Personnel) in the Ministry of Defence. He is Chairman of Moorfields Eye Hospital NHS Trust, Chairman of the Lord Chancellor's Advisory Board on Family Law and works as a senior consultant with the management communications company People in Business.

Mr Neil Barlow is experienced in human resources, finance and pensions management in the chemical and other industries. He is the Director of several private companies. He is a fellow of the Chartered Institute of Personnel and Development and a Fellow of the Royal Society of Arts, Manufactures and Commerce. He is an associate of the Institute of Linguists, and a member of an Employment Tribunal.

Mrs Elisabeth Elias qualified as a barrister. She sits as a Chairman of the Rent Assessment Panel for Wales and has served as a Magistrate for 18 years. She is Chairman of the Council of the Girls' Day School Trust and a Governor of the University of Glamorgan. She has been Chairman of a Local Research Ethics Committee and a non-executive member of the Board of the Welsh Health Common Services Authority from 1995 to 1999.

Dr Angus Erskine is a Senior Lecturer in Social Policy in the Department of Applied Social Science, in the University of Stirling. He has also been a lecturer at the Universities of Glasgow and Edinburgh and the, then, Sunderland Polytechnic. He has many years of experience working with local area based anti-poverty initiatives and is presently researching social inclusion in rural areas. He was Chair of the Editorial Board of the Journal of Social Policy (1997-2001) and is Review Editor for the Journal of Social Policy. He has researched and written on social security, social exclusion and poverty and co-edited The Student's Companion to Social Policy and The Dictionary of Social Policy.

Mr Richard Exell, OBE is the TUC's Senior Policy Officer responsible for social security. He took part in the European Commission's discussions leading to the Recommendations on Minimum Standards in Social Protection and the Guarantee of Benefits and Resources, and was a member of the trade union team in the discussions leading to the conclusion of the European agreement on parental leave. He has acted as rapporteur's expert for the Economic and Social Committee on two reports, including that on Social Exclusion. He is a member of the Disability Rights Commission.

Ros Gardner graduated from Southampton University and joined a major retailer undertaking a variety of appointments divisionally and at Head Office.

Ros now runs her own consultancy, specialising in Customer Care Excellence and Complaint Handling. Working with a wide range of clients she continues to help businesses exploit the opportunities that customer care provides.

Ros is past President of the Society of Consumer Affairs Professionals and a member of the National Speakers Association (USA). She is also a Founder Director of The Professional Speakers' Association in the UK, and a member of the National Federation of Consumer Groups. She is also a member of the School Teachers Review Body, and Chair of the Complaint Audit Committee of the Immigration & Nationality Directorate of The Home Office. She is also Complaints Mediator for the newly-established Criminal Records Bureau.

Alison Garnham is Director of Policy, Research and Information at the National Council for One Parent Families and has worked there since 1997. Her long track record in the voluntary sector includes work for women's organisations and many years experience as a welfare rights adviser before joining the Child Poverty Action Group (CPAG) for seven years. At CPAG she co-authored a number of publications about the Child Support Act. She has subsequently written extensively about lone parenthood and child poverty. Before joining One Parent Families she was Senior Lecturer in Social Policy at the University of North London where she remains an Honorary Research Fellow. She is also a Trustee of the Maternity Alliance.

Dr Christine Kenrick is a Chairman of Grimmitt Holdings Ltd and undertakes market research. She founded the Birmingham Community Foundation in 1995, The West Midlands Charity Forum in 1995 and chaired the Birmingham Settlement between 1987 and 1993. A former Non-Executive Director of Heartlands NHS Trust and South Birmingham Health Authority, she was the first Chairman of the Birmingham Women's Hospital from 1992-1999. A Trustee of local and national voluntary sector organisations, she is also a Member of Council of Aston University.

Dr Pui-Ling Li is Head of Corporate Unit at the Department of Health. She has an in-depth knowledge of population health, primary care and health service research. She was a general practitioner in Hackney until 1995, and has worked on primary care issues at national level as a member of the Primary Care Support Force for London, and as Chairman of the Primary Care Resource Group for the NHS Executive's Ethnic Health Unit. She has extensive experience of the voluntary sector. She set up the Chinese National Healthy Living Centre in China Town, London, in 1987, and has been Chairman of the Board since, and she is a director of the Bromley by Bow Healthy Living Centre. She is currently the UK Chairman of the Core Priority Group for the UK/USA Programme of Collaboration in Minority Ethnic Health.

Professor Eithne McLaughlin is Professor and Head of Social Policy at Queen's Belfast. She is a fellow of the Academy of Learned Societies for the Social Sciences. She has been a non-executive Director of Northern Ireland's largest Health and Social Services Board (EHSSB) for seven years, in two of which she had lead responsibility for complaints from the public about HPSS provision. She was also a member of the Review Panel examining

the future of post primary education in Northern Ireland and of the Human Organs Inquiry. She is a member of Barnardo's Northern Ireland Committee. She has researched and published extensively on unemployment, employment and labour market policies, community and informal care, disability and social security policy. She has personal experience of the needs of chronically sick and disabled people having herself an acquired visual impairment.

Mr Laurie Naumann took early retirement from the Scottish Council for Single Homeless in 1999. He had been involved in setting it up and was director from 1978. Previously he had worked in probation and after care, and a city centre social work development project concerned with alcohol problems and homelessness. From 1992 to 1995 he was seconded to The Scottish Office Social Work Services Inspectorate. Between 1981 and 1992 he was secretary of the Care in the Community Scottish Working Group. He is currently undertaking a mixture of voluntary and self employed work in the housing and social service field and on voluntary sector issues in Scotland and Hungary. At present he is Chair of the Highland Housing and Community Care Trust and the Consultation and Involvement Trust Scotland; a trustee of the Refugee Survival Trust and a board member of Garvald Training Centre for people with learning disabilities, the Scottish Refugee Council, and Kingdom and Old Town Housing Associations.

Professor Anthony Ogus, CBE holds a Chair of Law at the University of Manchester, having previously held appointments at the Universities of Leicester, Oxford and Newcastle-upon-Tyne. He has worked with social scientists in appraising different aspects of law and has written extensively on welfare law, including a textbook on social security. He is a member of the Editorial Advisory Committee of the Journal of Social Security Law. He has also served on committees of the Economic and Social Research Council.

Professor Robert Walker is Professor of Social Policy, University of Nottingham and Research Fellow at the Institute for Fiscal Studies. He has devoted his career to informing policy advance on issues related to social security, poverty and social exclusion in Britain and elsewhere through the assembly and dissemination of evidence and by direct engagement in the policy process. After a spell in the Civil Service, he worked at the Universities of Kent and York before directing the Centre for Research in Social Policy at Loughborough University. He has undertaken over 60 research projects and published 15 books. He is a Fellow of the Royal Society of Arts.

Annex E
List of SSAC Publications

Reports on Proposals and Responses by Secretary of State	Command No.
The Social Security (Persons Abroad) Amendment Regulations 1994	2450
The Housing Benefit and Council Tax Benefit (Amendment) Regulations 1994	2483
The Income Support (General) Amendment Regulations 1994	2537
The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1994	2609
The Housing Benefit, Council Tax Benefit and Income Support (Amendments) Regulations 1995	2783
The Social Fund Maternity and Funeral Expenses (General) Amendment Regulations 1995	2858
The Housing Benefit (General) Amendment Regulations 1995	2902
The Social Security (Income Support and Claims and Payments) Amendment Regulations 1995	2905
The Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996	3062
The Housing Benefit (General) Amendment Regulations 1996	3225
The Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996	3296
The Family Credit (General) Amendment Regulations 1996	3297
The Social Security (Disability Living Allowance and Claims and Payments) Amendments Regulations 1996	3233
The Income-related Benefits and Jobseeker's Allowance (Personal Allowances for Children and Young Persons) (Amendment) Regulations 1996	3393
The Social Security (Incapacity for Work and Severe Disability Allowance) Amendment Regulations 1997	3572

The Social Security (Social Fund and Claims and Payments) (Miscellaneous Amendments) Regulations 1997	3585
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 1997	3586
The Housing Benefit and Council Tax Benefit (General) Amendment Regulations 1997	3598
The Social Security (Lone Parents) (Amendment) Regulations 1997	3713
The Housing Benefit (General) (Amendment) (No. 2) Regulations 1996 (published without regulations October 1997)	no Cm No.
The Jobseeker's Allowance (Amendment) Regulations 1998	3829
The Social Security (Contributions) Amendment (No. 2) Regulations 1998	3892
SSAC Stewardship Reports	Year
Social Security Advisory Committee Ninth Report	1993
Social Security Advisory Committee Tenth Report	1995
Social Security Advisory Committee Eleventh Report	1997
Research Papers	Year
Outside the Banking System Research Paper 6	1994
Social Security and Mental Health: Report on the SSAC Workshop Research Paper 7	1996
Helping Disabled People to Work: A Cross-National Study of Social Security and Employment Provisions Research Paper 8	1997
Occasional Papers	Year
Social Security Provisions for Disability: A Case for Change?	1997

Papers Published by SSAC	Year
In Work, Out of Work: The Role of Incentives and Disincentives in the Benefits System	1994
State Benefits and Private Provision	1994
Housing Benefit	1995



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